

UNITED STATES OF AMERICA :
:
v. : **CRIMINAL NO. 99-267**
RICHARD LOWERY

The United States of America, by Michael R. Stiles, United States Attorney for the Eastern District of Pennsylvania., and Louisa Ashmead Robinson, Special Assistant United States Attorney for the district, moves for a detention hearing¹ and pretrial detention of the defendant pursuant to 18 U.S.C. § 3142(f). The government seeks this Order, because no condition or combination of conditions will reasonably assure the defendant's appearance as required or the safety of other persons and the community.²

In support of this motion, the government makes the following representations and proposed findings of fact:

¹ Under 18 U.S.C. § 3142(f), a judicial officer shall hold a detention hearing upon motion of the government in a case, as here, which involves an offense punishable by life imprisonment. 18 U.S.C. § 3142(f)(1)(B).

² The government must prove by a preponderance of the evidence that no conditions of release reasonably will assure the defendant's appearance or prove by clear and convincing evidence that no conditions of release will assure the safety of the community. United States v. Himler, 797 F.2d 156, 161 (3d Cir. 1986).

1. There is probable cause to believe that the defendant has violated 18 U.S.C. § 922(g) as charged by indictment on May 11, 1999. The evidence in this case is strong and consists of eyewitness testimony of two Philadelphia police officers. The evidence is expected to be that on August 13, 1997 the defendant possessed an Uzi, a semiautomatic weapon, model mini carbine, 9 millimeter Luger, serial number MC03002, loaded with twenty (20) rounds of ammunition. The defendant was arrested inside of Fang's Restaurant, located at the corner of Huntingdon and 12th Streets. Defendant was arrested by two bicycle officers who proceeded to that location to investigate a civilian report of gun shots in that area.

At Fang's Restaurant, one of the officers, Officer Gregory Wilkinson, saw the defendant reach across his body. Officer Wilkinson yelled "Freeze, get down, get down" but instead of complying the defendant turned and proceeded towards the back side door of the restaurant. Officer Wilkinson saw the defendant pull the Uzi out from under his shirt as the defendant went towards the back of the store. Officer Wilkinson then heard three gunshots. In the meantime, the other bicycle officer, Officer Andre Clarke, had gone to cover the back side entrance. The defendant pointed the Uzi at Officer Clarke. Officer Clarke fired two shots at the defendant and ran for cover behind a parked car.

Officer Clarke appreciated that he was not in a safe place and he ran towards the front door of Fang's. Officer Clarke fired an additional three shots as he ran from the car to the door of the restaurant, where he joined Officer Wilkinson. Officer Wilkinson fired two shots at the defendant from his location at the front door of Fang's. The defendant was repeatedly instructed to drop his gun but did not do so. Eventually, the defendant yelled out that he no longer had a gun and collapsed into a chair with gunshot wounds to his stomach and leg; he was transported to Temple

Hospital, where he had his appendix removed. The Uzi was recovered near the defendant. Neither officer was struck during the gunfire.

The only other persons in the store were the owner and an employee who had taken cover on the floor behind the bullet proof glass which extended from the counter top to the ceiling. It is expected that the owner will testify at trial that he heard the police repeatedly shouting to the defendant to drop his gun. Ballistic evidence recovered included a freshly fired cartridge from the back steps which did not match either of the officers' guns and had characteristics consistent with an Uzi.

2. The strength of the evidence in this case, the violent nature of the circumstances of the case, and the corresponding probability that the defendant will be incarcerated for a significant period of time establish the defendant's danger to the community and increases the high risk that the defendant will not appear as required by the Court.

B. Maximum Penalties

1. The defendant is charged with one count of possession of a firearm by a convicted felon, which exposes the defendant to a maximum penalty of life imprisonment, as an Armed Career Criminal, and a \$250,000 fine.

2. The defendant faces a mandatory minimum period of 15 years in prison due to his status as an Armed Career Criminal.

3. Under the Sentencing Guidelines, the government estimates conservatively that the defendant faces a prison term of 262-327 months without parole, based on an offense level of 34 and Criminal History Category of VI, USSG § 4B1.4(b)(3) and (c)(2), because the defendant used the firearm he possessed in a crime of violence.

4. Accordingly, the defendant has a substantial incentive to flee.

C. Prior Criminal Record

1. The defendant has a 1995 felony drug conviction which stems from an arrest on January 14, 1994. This is the defendant's first qualifying conviction as an Armed Career Criminal (hereinafter referred to as "ACC").

2. The defendant has a 1995 felony drug conviction which stems from an arrest on October 13, 1994. This is the defendant's second qualifying conviction as an ACC.

3. The defendant has a 1995 felony drug conviction which stems from an arrest on November 23, 1994. This is the defendant's third qualifying conviction as an ACC.

4. The defendant has a 1995 felony drug conviction which stems from an arrest on December 19, 1994. This is the defendant's fourth qualifying conviction as an ACC.

5. The defendant has an April 13, 1993 adjudication of delinquency for a felony drug offense where he was committed to Glen Mills until July of 1994.

6. The defendant has an adjudication of delinquency for a Simple Assault on April 16, 1993 and was committed on that matter through July of 1994.

D. Ties To The Community

1. While the defendant arguably has some ties to the community, the legislative history of the Comprehensive Crime Control Act of 1983 indicates that Congress found that community or family ties do not and should not weigh heavily in the risk of flight analysis. See Sen. Comm. on Judiciary, Comprehensive Crime Control Act of 1983, S. Rep. No. 98-225, 98th Cong., 1st Sess. 24, 25 (1983).

E. History and Character of the Defendant

The defendant is unemployed. He does not provide financial support to anyone. On May 19, 1999, the defendant was arrested on the federal warrant in this matter and he tested positive for marijuana and PCP. He admits to using marijuana. He has one prior failure to appear in court. He resides at 215 Walnut Lane, Apartment D-403, Philadelphia, Pa.; he has only lived there for the last six months.

F. Rebuttable Presumption

Because the defendant's October, November and December 1994 arrests, which led to convictions, apparently occurred while the defendant was on pre-trial release from his January 1994 arrest, because these arrests concerned drug trafficking, and because the date of conviction in 1995 is less than 5 years old, there is a rebuttable presumption of detention under 18 U.S.C. § 3142(e)(1), (2) and (3).

III. CONCLUSION

Nothing short of 24-hour custody and supervision can ensure the appearance of this defendant and the safety of the community. The conditions of release enumerated in the detention statute at Section 3142(f) would serve only to inform the Court, after the fact, that the defendant has fled or resumed his criminal career.

For all of the reasons stated above, the United States respectfully requests that its motion for pretrial detention be granted.

Respectfully submitted,

MICHAEL R. STILES
United States Attorney
Eastern District of Pennsylvania

J. HUNTLEY PALMER
CHIEF, FIREARMS
Assistant United States Attorney

LOUISA ASHMEAD ROBINSON
Special Assistant United States Attorney

Date: _____, 1999

CERTIFICATE OF SERVICE

I certify that on this day I caused a copy of the government's detention motion to be served by hand addressed to:

Michael Giampietro, Esquire
834 Chestnut Street
Suite 206
Philadelphia, Pa. 19107

LOUISA ASHMEAD ROBINSON
Special Assistant United States Attorney

Date: _____